



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/171306

PRELIMINARY RECITALS

Pursuant to a petition filed January 09, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to Child Care, a hearing was held on February 17, 2016, at Sparta, Wisconsin.

The issue for determination is whether the agency erred in its determination of a CC overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED]

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Monroe County.
2. Petitioner was an ongoing recipient of CC benefits for child J. while J. was a foster child of petitioner.

3. During all the months of the overpayment claim, the threshold income amount for eligibility for the household was \$3,255.
4. During all the months of the overpayment claim the agency did not budget any income for the parents because the agency believed that the child was a foster child.
5. The petitioner adopted the child on 11/26/13.
6. During all the months of the overpayment claim, the household income exceeded \$3255.
7. During all the months of the overpayment claim, the payments to the provider amounted to \$4,974.

DISCUSSION

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1m). Prior to January 1, 2004, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. See, *DWD Operations Memo*, #03-66. See also, Wis. Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*; *Child Day Care Manual*, §2.5.0.

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, § DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g).

It makes no difference as to whether an overpayment was caused by the county agency or the client since the recovery of the overpayment is required, regardless of fault. Wis. Stat., §49.195(3), provides that the agency must determine if an overpayment has occurred under §49.155, and the agency must seek recovery of the overpayment. There is no exception for situations where the agency's error caused the overpayment. As with welfare programs such as Food Stamps and the former Aid to Families with Dependent Children, an overpayment must be recovered even if it was caused by agency error.

The income of foster parents is not calculated or budgeted in determining eligibility for CC of the foster child. See Wisconsin Shares Manual § 1.8.1. But, if a child is an adopted child then the parents' income is budgeted in determining eligibility. See *id.* In this case, the circumstances affecting eligibility changed materially one the adoption was final and J. was no longer a foster child.

Petitioner argued that the household income was reported to the agency on an ongoing basis during the overpayment period. But, this does not matter because the agency was not counting the income due to its belief that the child remained a foster child. Petitioner also argues that it reported the adoption. This may be so, and the fault may lie with some county worker who answered the phone and failed to properly record the report. But, as stated above, whose error caused the overpayment does not matter. The critical issue is whether there was an overpayment. The agency's exhibits and the petitioner's testimony clearly indicate that the household exceeded the income limits and should not have gotten CC for the adopted child. Petitioner's main argument is that it is not fair to come two years later to seek recoupment and that such an action causes a hardship. But, this is what the law requires when the agency realizes an overpayment of CC.

CONCLUSIONS OF LAW

1. The household was not eligible for Child Care benefits during the period of the overpayment because the child had been adopted and the agency did not budget the household income as it should have done for an adopted child.
2. The benefits overpaid amounted to \$4,974.00.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 27th day of April, 2016

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 27, 2016.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud